Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-1468

HARREL LLOYD ROBINSON, JR.
Petitioner

versus

THE UNITED STATES OF AMERICA
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

L. ARON PENA
PENA, McDONALD,
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512/383-6251

Attorneys for Petitioner

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No.

HARREL LLOYD ROBINSON, JR.
Petitioner

versus

THE UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Harrel Lloyd Robinson, Jr., respectfully prays that a Writ of Certiorari issue to review the opinion of the United States Court of Appeals for the Fifth Circuit, entered in this proceeding on February 8, 1978.

OPINION

The decision of the United States Court of Appeals for the Fifth Circuit on original submission, by written opinion, affirmed the judgment of the trial court. (A-1). Motion for Rehearing, timely filed, was denied on March 16, 1978.

JURISDICTION

This Petition is filed within thirty (30) days of the date denying Appellant's Motion for Rehearing. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

That the Motion to Suppress the evidence which attempts to support Appellant's conviction, should not have been denied absent probable cause for the search of Appellant's vehicle on an open highway.

STATEMENT OF THE CASE

Petitioner, Harrel Lloyd Robinson, Jr., was charged by grand jury indictment with possessing a quantity of marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1). Upon conclusion of a bench trial, Defendant's Motion to exclude evidence illegally obtained was overruled, and Defendant was found guilty on the evidence. The Defendant had been stopped, and his vehicle searched, at a non-existent immigration checkpoint on a farm-to-market highway north of the metropolitan Rio Grande Valley of Texas.

REASONS FOR GRANTING THE WRIT

A Writ of Certiorari should be granted in this case because the conclusion made by the lower courts that the stopping point in question is either a permanent checkpoint and/or a functional equivalent of the border is not borne out by the facts and circumstances in light of the principles enunciated by this Court in its recent decisions. *Terry v. Ohio*, 392 U.S. 1 (S.Ct. 1968); *Almeida-Sanchez v. United States*, 413 U.S. 266 (S.Ct. 1973); *United States v. Brignoni-Ponce*, 422 U.S. 873 (S.Ct. 1975). The stopping point on the farm road is many miles distant from the international boundary and is not manned but by a mobil unit without permanent probability that any traveler has crossed the international boundary before reaching the point. *United States v. Brennan*, 538 F. 2nd 711 (5th Cir. 1976), 429 U.S. 1092.

The Fourth Amendment exclusionary rule has been so limited by the extension of these so-called traffic checkpoints, that all citizens and travelers in this metropolitan area of the State of Texas can be stopped and searched at the whim of immigration police.

CONCLUSION

For these reasona a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit. Petitioner further prays that an order issue staying mandate which would require Appellant to begin serving a five-year sentence imposed.

Respectfully submitted,

L. Aron Pena
Pena, McDonald, Prestia & Zipp
P.O. Drawer 54
Edinburg, Texas 78539
512/383-6251

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 1978, three copies of the Petition for Writ of Certiorari were mailed, postage prepaid, to Hon. Wade H. McCree, Jr., Solicitor General of the United States, Department of Justice, Washington, D.C. 20530; and one copy was mailed, postage prepaid to Hon. John P. Smith, Assistant U.S. Attorney, U.S. Courthouse, Brownsville, Texas.

L. Aron Pena

OPINION OF CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

UNITED STATES of America,
Plaintiff-Appellee

v.

Harrel Lloyd ROBINSON, Jr.,
Defendant-Appellant

No. 77-5509
Summary Calendar.*

United States Court of Appeals, Fifth Circuit

Feb. 8, 1978

The United States District Court for the Southern District of Texas, Ross N. Sterling, J., convicted defendant of possession of marijuana with intent to distribute, and defendant appealed. The Court of Appeals held that where officer of border patrol at border patrol checkpoint located northwest of LaGloria, Texas, detected strong odor of marijuana emanating from vehicle as officer approached vehicle to conduct routine citizenship check, officer had probable cause to institute search of trunk.

Affirmed.

*Rule 18, 5 Cir.; see *Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al.*, 5 Cir. 1970, 431 F.2d 409, Part I.

1. Searches and Seizures 3.3(6)

LaGloria, Texas, border patrol checkpoint is functional equivalent of border, and neither warrant nor probable cause is required for routine searches conducted there of automobile trunks and other large spaces in which aliens may be concealed.

2. Customs Duties 126

Even if LaGloria, Texas, border patrol checkpoint was not functional equivalent of border, checkpoint was permanent one at which brief, routine stops for immigration checks were permitted, so that border patrol officer at such checkpoint who detected strong odor of marijuana emanating from vehicle as he approached vehicle to conduct routine citizenship check had probable cause to search trunk of vehicle.

Appeal from the United States District Court for the Southern District of Texas.

Before AINSWORTH, MORGAN and GEE, Circuit Judges.

PER CURIAM:

Harrell Lloyd Robinson, Jr., was convicted of possession, with intent to distribute of approximately 235 pounds of marijuana, in violation of 21 U.S.C.§ 841(a)(1). The contraband was discovered in the trunk of Robinson's vehicle following a search by an officer of the United States Border Patrol at the Border Patrol checkpoint located 7.8 miles

northwest of LaGloria, Texas, on Highway 1017. This search was occasioned when, as the patrolman approached the vehicle to conduct a routine citizenship check, he detected a strong odor of marijuana emanating from it.

[1] Robinson contends that the officer lacked probable cause to institute the search, and that, therefore, the district court erred in denying his motion to suppress the contraband from admission into evidence at trial. The argument is foreclosed by the recent decision in *United States v. Alvarez-Gonzalez*, 561 F.2d 620 (5th Cir. 1977), which held the La Gloria checkpoint is the functional equivalent of the border and that neither a warrant nor probable cause is required for routine searches conducted there of automobile trunks and other large spaces in which aliens may be concealed. *See Almeida-Sanchez v. United States*, 413 U.S. 266, 93 S.Ct. 2535, 37 L.Ed.2d 596 (1973).

[2] But even were this not so, the LaGloria checkpoint is a permanent one at which brief, routine stops for immigration checks are permitted. *United States v. Santibanez*, 517 F.2d 922 (5th Cir. 1975). The odor of marijuana perceived by the officer during this stop furnished probable cause for further investigation.

Accordingly, the conviction is

AFFIRMED.

DENIAL OF PETITION FOR REARING

United States Court of Appeals
Fifth Circuit

Office of the Clerk
Edward W. Wadsworth
Clerk

600 Camp Street
New Orleans, La. 70130

March 16, 1978

TO ALL PARTIES LISTED BELOW:

NO. 77-5509 - U.S.A. v. HARREL LLOYD ROBINSON, JR.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition ( ) for rehearing**, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition ( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

EDWARD W. WADSWORTH, Clerk
By: s/ Brenda M. Hauck
Deputy Clerk

bh
cc: Mr. L. Aron Pena
Mr. James Gough

CRIMINAL DOdocket - U.S. District Court

541 1 4106 ROBINSON, HARREL LLOYD, JR. (27) 4 5 2 B 77 157 1

U.S. DISTRICT COURT CASE NO. M-77-7228-01

OFFENSES CHARGED
21:841(a)(1) Possessing approx.235 lbs.of marihuana w/intent to distr. Ct. 1 1

230.

3/21/77

ARREST OF 3/19/77 INDICTMENT 4/3/77 ARRAIGNMENT TRIAL SENTENCE

MAGISTRATE

3/21/77 CMT 41JH 3/21/77 CMT 41JH OUTCOME

Possess, conspiracy to possess with intent to distr. approx.235 pounds marihuana., Title 21, Sec. 841 (a) (1),846

John P. Smith, AUSA

ATTORNEYS
Pena, McDonald, Prestis & Zipp
P. O. Box 54
Edinburg, Texas 78539

DATE PROCEEDINGS

HARTLAGE, GARY LOUIS (2)

DATE	ROBINSON, M-77-722M-01 PROCEEDINGS (CONTINUED) PAGE TWO	V EXCLUDABLE DELAY
3/21/77	Complaint filed; Defendant informed of Complaint, right to counsel and all rights under Rule 8, U. S. Magistrate's Rules. Defendants did not waive preliminary hearing & bond set at $30,000.00 each. Defendants will advise as to counsel & did waive Court appointed counsel. Defendants will advise as to whether or not they will request a preliminary hearing subject to speaking with their attorneys. Defendants committed to custody of U.S. Marshal. CMT	
3/24/77	Def. Robinson's bond raised by Judge Mallet to $50,000. Def. Robinson released on a $4,000 deposit on his bond. His address: 202 Crescent Ct., Louisville, Ky. 40206, Tel. No. 502 897-5087. Def. Hartlage released on a $3,000 deposit on his $30,000 bond. His address: 6721 Oak Valley Dr., Louisville, Kentucky 40214, Tel. No. 502 447-5005. Deposits transmitted to U. S. District Clerk in Houston, Texas. Pena, McDonald, Prestia & Sipp represent both defendants. MMM	
4/5/77	CERTIFICATE OF GRAND JURY FILED.	
4/5/77	INDICTMENT FILED. *30*	
4/5/77	Notice of Arr: for 4/14/77 at 9:30 A.M. as to deft. Robinson, Jr. and Hartlage.	
4/14/77	ARR/ROG/Horn--Dfts. appear w/counsel L. Aron Pena. Caut. waive formal ARR; enter P/N.G.--Mr. Robinson is working on a Rule 20 to KY--[redacted]. Jury Sel.: 4/25/77 @ 10 a.m. "La Gloria checkpoint case". *Motion to Suppress, if any will be carried along w/case (gov't. will not waive a jury).	
4/21/77	MOTION TO SUPPRESS, Filed. (as to dft. Robinson) *33*	
/25/77	Jury sel/ROG/Horn--Dfts. Robinson & Hartlage appear w/L. Aron Pena. Jury selected but not sworn. Trial to commence on 6/24/77 @ 9:30 a.m. before Judge MMS, Panel "A_3" ETT--1½ days. Motion to Suppress will be carried along w/case.	
/20/77	Dft. Gary Louis Hartlage has applied for Pre-Trial Diversion. Dft. Robinson appears w/L. Aron Pena--Stipulation presented *37* to Court (as to nature of testimony of govt wits.) Waiver of Jury executed & approved by Court. Govt. evidence begins *39* 1 witness--gov't. rests. Dft. re-urges Motion to Suppress--Denied. Court finds dft. guilty, Sentencing: 7/26/77 @ 9:30 a.m. in Houston.	

FINE AND RESTITUTION PAYMENTS

RECEIPT NUMBER	DATE	RECEIPT NUMBER	CC NUMBER

CRIMINAL DOCKET

DATE	Cr. #B-77-157 PROCEEDINGS
7/26/77	BEFORE RMS, Sitting in Houston, TX: Sentencing/Gettig--Dft. Harold Lloyd Robinson, Jr. appears w/ L. Aron Pena. SENTENCE: 5 yrs. imprisonment w/SPT of 2 yrs. Notice of Appeal given; Dft. Robinson remains on bond pending *32* appeal.
7/26/77	Notice of Appeal, Filed. *33*
AUG 8 1977	JUDGMENT AND SENTENCE, Signed RMS Filed & Entered *34*
9/6/77	Reporter Transcript of Proceeding, filed. /
9/14/77	Mailed original file to M.O.

INDICTMENT

UNITED STATES DISTRICT COURT
Southern District of Texas
Brownsville Division

Filed: April 5, 1977

UNITED STATES OF AMERICA

vs. CR. NO. B-77-157

HARREL LLOYD ROBINSON, JR.
GARY LOUIS HARTLAGE

INDICTMENT

THE GRAND JURY CHARGES:

That on or about March 19, 1977, within the Brownsville Division of the Southern District of Texas, and within the jurisdiction of this Court, HARREL LLOYD ROBINSON, JR., and GARY LOUIS HARTLAGE did knowingly and intentionally possess, with intent to distribute, approximately Two Hundred Thirty-Five (235) pounds of marihuana, a controlled substance under Schedule I of the Controlled Substances Act of 1970, contrary to Section 841(a)(1), Title 21, United States Code.

A TRUE BILL

s/ O. Wayne Cole
FOREMAN OF THE GRAND JURY

EDWARD B. McDONOUGH, JR.
UNITED STATES ATTORNEY

BY:S/ John Patrick Smith
JOHN PATRICK SMITH
Assistant United States Attorney

MOTION OF DEFENDANT TO SUPPRESS

CAUSE NUMBER
B-77-157

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

FILED: April 21, 1977

UNITED STATES OF AMERICA
VS. MOTION TO SUPPRESS
HARREL LLOYD ROBINSON, JR.

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES HARREL LLOYD ROBINSON, JR., Defendant by and through his Attorney of Record and respectfully moves the Court to suppress all evidence seized as a result of a search of the person and vehicle on the 19th day of March, 1977, and the fruits of the arrest incident to such illegal search. Defendant relies upon the following reasons to support his Motion:

I.

That the Defendant's person was searched as a result of an arrest without probable cause and without valid warrant in violation of the 4th and 14th Amendments of the Constitution of the United States of America. In this connection, Defendant, HARREL LLOYD ROBINSON, JR., will show the Court that he was arrested without a valid warrant while traveling in a car under circumstances not entitling an officer

of the law to arrest a person without probable cause.

II.

That the above search of both the person and the vehicle was therefore illegal and all fruits of this illegal search must be suppressed.

III.

That the arrest incident to such illegal search was illegal and therefore all other statements and evidence gathered as a result of such illegal arrest must necessarily be suppressed.

Wherefore, Defendant, HARREL LLOYD ROBINSON, JR., prays that this Motion be in all things granted.

Respectfully submitted,

PENA, McDONALD, PRESTIA & ZIPP
P.O. Box 54
Edinburg, Texas 78539

BY: S/ L. Aron Pena
L. Aron Pena

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I, L. ARON PENA, hereby certify that I have send a copy of the foregoing Motion to the Office of the District Attorney, Federal Courthouse Building, Brownsville, Texas, 78550 by certified mail, return receipt requested, postage prepaid.

Signed this the 19th day of April, 1977.

S/ L. Aron Pena
L. Aron Pena

CAPTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA
V. NO. B-77-157
HARREL LLOYD ROBINSON, JR.

BE IT REMEMBERED, that in the above entitled and numbered cause, lately pending is said Court, in which JUDGMENT AND COMMITMENT ORDER was entered on the 8th. day of August, 1977, the Honorable Ross N. Sterling, Judge of the United States District Court for the Southern District of Texas, presiding, the following proceedings were had, to-wit:

*
*
*
*

TRANSCRIPT OF PROCEEDINGS OF JUNE 20, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

CR. NO. B-77-157
UNITED STATES OF AMERICA
VS.
HARREL L. ROBINSON

BEFORE
HONORABLE ROSS N. STERLING

DISTRICT JUDGE
BROWNSVILLE, TEXAS
JUNE 20, 1977

APPEARANCES

JOHN P. SMITH, ASSISTANT
UNITED STATES ATTORNEY
U. S. COURTHOUSE
BROWNSVILLE, TEXAS
APPEARING FOR THE
GOVERNMENT

PENA, MC DONALD, PRESTIA &
ZIPP (L. ARON PENA)
600 SOUTH CLOSNER AVENUE
P.O. DRAWER 54
EDINBURG, TEXAS 78539
APPEARING FOR THE
DEFENDANT

PROCEEDINGS

JUNE 20, 1977

(DEFENDANT PRESENT IN OPEN COURT
IN PERSON AND BY COUNSEL)

THE COURT: Call Criminal Action B-77-157, United States of America versus Harrel L. Robinson, Jr. Is the Government ready?

MR. SMITH: Government is ready.

MR. PENA: Defendant is ready.

THE COURT: This is the only defendant going to trial at this time?

MR. SMITH: Yes, Your Honor.

THE COURT: What are we here to do?

MR. SMITH: The Government and defense have agreed to stipulate to certain matters. A written stipulation has been prepared and signed for the Court, and there would be two things that I know need to be done; that the defendant in open Court would need to waive his jury trial, and then some small, very short testimony of one border patrol officer.

THE COURT: I understand that you have chosen to waive a jury, Mr. Robinson. Is that your understanding?

THE DEFENDANT: Yes.

THE COURT: You all have signed it, and I will sign it. Very well, I have signed the jury waiver.

MR. PENA: We have signed a stipulation in writing. Mr. Robinson has read it and agreed to it. There is a couple of conclusions, it is made with the understanding if the witnesses for the Government were called to testify, they would testify substantially as stipulated.

Also, in paragraph One, we call the stopping point the border patrol check point. We submit to the Court that would be a factual conclusion that can be brought out further through a witness.

THE COURT: Do I need to read this to understand what the witness is going to say?

MR. PENA: Probably so, Your Honor.

THE COURT: Give me a second and I will read it.

All right.

MR. SMITH: Call Alfredo Aguilar.

ALFREDO B. AGUILAR,

a witness called for and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SMITH:

Q Will you state your name to the Court, please, sir?

A Alfredo B. Aguilar.

Q What is your occupation?

A Border patrol agent right now.

Q Where are you stationed?

A Rio Grande City, Texas.

Q Returning your attention to March 19, 1977, were you so employed and on duty on that date?

A I was.

Q Where were you working?

A The LaGloria check point.

Q Did you have occasion to come in contact with a vehicle that concerns the instant case?

A Yes.

Q How did you come in contact?

A I was working the checkpoint at that time, sir, at 8:45, and it was a 1973 Ford, black over yellow, approached the checkpoint. We noticed that the car was riding high in the rear, didn't have any front plates. I approached the vehicle and identified myself as a border patrol agent, and stated it was an immigration check. As soon as I -- I must have been about two or three feet away from the vehicle, that's when I noticed a strong odor of marijuana.

Q Did you notice anyting else unusual about the vehicle as you viewed it?

A Yes, sir. In the back seat quite a number of suitcases and clothing.

Q When you smelled the marijuana and noticed that was some suitcases and clothing in the back seat, what did you do then?

A I asked the driver, Mr. Robinson, to open the trunk.

Q And what happened then?

A Mr. Robinson got out of the car and opened the trunk about one-third of the way. By that time I had my flash light and I noticed what I thought was marijuana, and he attempted to re-close the trunk again. So I instructed Mr. Robinson to re-open the trunk, and that's when I noticed the marijuana.

Q Is the person you are talking about in the courtroom today?

A Yes.

Q Would you point him out?

A Sitting right next --

Q What does he have on?

A Right now a rust colored suit.

MR. SMITH: May the record reflect that this witness has identified the defendant Harrel Lloyd Robinson.

THE COURT: Very well.

Q (BY MR. SMITH) I hand you what has been marked for identification as Exhibit One. Is that a fair and accurate representation of what it depicts?

A Yes, it is.

MR. SMITH: Government would offer what has been marked as Government Exhibit One.

MR. PENA: No objections.

Q (BY MR. SMITH) Is that a picture of the trunk of the vehicle that you are talking about in your testimony?

A Yes, it is.

MR. PENA: I would like to have the record show that the motion to Suppress, we have asked the Court to carry it along.

THE COURT: Very well.

Q (BY MR. SMITH) When you discovered the marijuana in the trunk, what happened then?

A I instructed the defendant to walk towards the patrol car, told him he was under arrest, and then I walked over to the driver's side and I instructed the other defendant to open the door and that he was under arrest also.

Q Did you determine whether there were any weapons in the vehicle?

A After we arrested them, we asked both individuals if there were any firearms, and both of them stated there was, in the back seat in one of the suitcases.

Q In the rear seat?

A Yes.

Q I hand you what has been marked for identification as Government Exhibit Two. Do you recognize that?

A Yes, sir, that's a .38 special.

Q Is that the pistol and ammunition that you found in the vehicle?

A Yes, sir.

Q And that is what was in the suitcase in the rear seat?

A Yes, sir.

MR. SMITH: Pass the witness.

CROSS EXAMINATION

BY MR. PENA:

Q Mr. Aguilar, it was dark already?

A Yes, it was dark.

Q And this is what you call a traffic checkpoint near La Gloria?

A Yes, approximately 7.8 miles.

Q Could you tell the Court, and for the record, the distance, approximately, from the River, the international boundary of United States and Mexico?

A Thirty-two air miles from the border to the checkpoint and approximately about 42 miles, land miles, to the check point from the border.

Q Do you man this checkpoint at all times?

A It all depends on the manpower, sir.

Q At the time of the occasion in question, was the service manning this checkpoint at all times?

A Yes, sir.

Q Day and night?

A Day and night, twenty-four hours.

Q Was there a unit there at all times?

A Yes, sir.

Q What did the unit consist of?

A Two men and a patrol car, one vehicle.

Q Anything else?

A No, sir.

Q Was there any permanent building?

A No, sir. We don't have a permanent building.

Q Do you have a mobile unit other than a vehicle?

A Just the vehicle, sir.

Q You have no permanent buildings there. Is there anything except, perhaps, a stop sign?

A Yes, sir, we have several signs out there.

Q You have several signs?

A Yes, sir.

Q That tell a motorist to stop along the road?

A Yes, sir.

Q This is a straight, open highway, is it not?

A It is, sir.

Q Now, this vehicle driven by the defendant, did it have a Kentucky license plate on it?

A In the rear, sir.

Q Is that pretty normal for a vehicle, particularly out-of-state, to have only one license plate?

A Yes, it is.

Q So the fact that it contained no front license plate didn't create any suspicion on your part as to any criminal activity?

A Not on my part.

Q You said the vehicle was riding high?

A Yes, sir.

Q This was a 1973 Model automobile, was it not?

A Yes, sir.

Q Is there anything unusual about two young people, young men, driving an automobile that is riding high?

A Nothing unusual, no, sir.

Q Now, you said that there was some luggage or clothing in the back seat of the car?

A That's correct.

Q This pistol that has been shown by the Government, was it in open view?

A No, sir, it was in a suitcase.

Q Inside the suitcase?

A Yes.

Q Was the suitcase closed?

A Yes, sir.

Q Was it locked?

A No, sir, it was not.

Q But it was closed?

A Yes.

Q Was there any clothing inside the suitcase?

A Yes, there was.

Q And there was some clothing in the back seat of the car?

A That's correct.

Q Does that, in itself, create any criminal suspicion on your part?

A No, sir.

Q I show you whast has been marked by the Clerk as Exhibit Two for the Government, and ask you if you recognize that photograh?

A Yes, sir.

Q Will you tell the court what it is?

A Right now the sign is folded up, but actually that sign right there is a stop sign and at the point where we park the vehicle.

Q Does the photograph depict the location where you manned the checkpoint when it is in fact manned?

A Yes, sir.

MR. SMITH: The Government has no objection.

Q (BY MR. PENA) The exhibit shows the location of the checkpoint where you do man this particular traffic checkpoint?

A Yes, sir.

MR. PENA: We ask that it be admitted in evidence, Your Honor.

THE COURT: It is admitted.

Q (BY MR. PENA) Now, that exhibit, when you do man checkpoint, what is added?

You said that the sign is folded down, the sign shown in the photograph?

A Yes, sir.

Q What does that sign say when it is unfolded?

A "Stop."

Q And in addition to the stop sign when fully shown, what else is at the check point when manning the checkpoint?

A We have three other signs prior to that one.

Q I have photographs that might snow those, but this particular view of exhibit two for the defense, what else can be seen in your manning the checkpoint?

A The patrol car.

Q A patrol car?

A Yes, sir.

Q Anything else?

A The lights, which would be on.

Q The lights can be on?

A Yes, sir.

Q Are you talking about a lamppost that sits above the road?

A Yes, sir.

Q Anything else?

A Three floodlights also.

Q The three floodlights, are they from the lamp pole in the photograph?

A Yes.

Q So there are lights coming from the tower and there is a stop sign?

A Yes, sir.

Q And the patrol car?

A Yes, sir.

Q And two of you in most instances?

A Always two.

Q But one patrol unit?

A Yes, sir.

Q Now, I show you what has been marked as exhibit one for the defendant and ask you if this is not a true and accurate portrayal of the scene as it existed during the day?

A Yes, sir.

MR. SMITH: The Government has no objection to that exhibit.

Q (BY MR. PENA) Is the photograph a scene of the outpost at a further distance from what would be the checkpoint?

A Right.

MR. PENA: We ask that it be admitted in evidence for the court's consideration.

THE COURT: It is admitted.

Q (BY MR. PENA) This is exhibit one for the defendant. Is it a photograph of the location taken at a further distance?

A Yes, it is.

Q And I believe it shows one other traffic signal?

A Yes.

Q What does that traffic signal indicate?

A "Stop ahead U.S. Officers."

Q Are you sure that it says "U.S. Officers?"

A Yes, sir.

Q "Stop ahead U.S. Officers?"

A Yes.

Q Does that traffic sign along the road have any kind of a light?

A It is fitted with reflectors on it.

Q But no electricity?

A No, sir.

Q Except the vehicle, when you are manning the checkpoint, is there anything else that can be seen at this scene of the photograph?

A No, sir.

Q At night you turn on the lights?

A Yes, sir.

Q During the day do you have any lights of any kind?

A No, sir, we don't.

Q Now, when did you first gather or recognize an odor of what you thought was marijuana after you talked, after you stopped the vehicle and talked to the individual -, or after you talked to the individuals?

A When I was asking the individuals about their citizenship, sir.

Q At the time --

A As soon as I identified myself as a border patrol immigration check, and I asked them about citizenship, that's when I noticed the strong odor of marijuana coming from within.

Q Did you have any intention of searching the trunk of the

car at that time?

A No, sir.

Q So it was the odor of marijuana that prompted you to ask that the trunk be opened?

A Yes, sir.

Q Did you find the defendant and the occupant of the automobile, the other occupant, cooperative with you?

A Yes, they were very cooperative.

MR. PENA: No further questions at this time.

REDIRECT EXAMINATION

BY MR. SMITH:

Q Now, sir, have you seen cars at that checkpoint and other places that had suitcases and clothing in the rear?

A Yes, sir, I have.

Q And under certain conditions that can be a suspicious thing to you?

A Yes, sir.

Q Because you have seen cars before that had illegal alliens in the rear, and maybe contraband in the rear, when clothing and stuff was in the rear seat, and you have opened the trunk and found illegal aliens and contraband?

A On several occasions I have.

Q So, in addition to smelling the marijuana, the clothing being out of its ordinary place in the vehicle also caused you some suspicion?

A Yes, sir.

Q Now, sir, when you say the defendants had been very cooperative, that was not taking into account the trying to close the trunk right fast?

A No, sir.

Q It was after that?

A Right after that.

Q At that checkpoint, there is also a paved area off the road about three hundred feet long, is there not?

A Yes.

Q And an electrical outlet?

A Yes, sir.

Q And the lights that you mentioned. And all-in-all, how many signs are there?

A Coming from La Gloria towards the checkpoint there are three signs, four signs with the stop sign.

Q And then north of that there is a sign?

A There is one past the checkpoint about 150 yards which gives a thank you sign, and further up there is another one, "warning" for pedestrians or vehicles coming south to slow down.

Q And the signs, the four signs altogether, as you approach the checkpoint, they have been delineated and pictures taken of them and described in many other cases as to what they say?

A Yes, sir.

MR. SMITH: Pass the witness.

RECROSS EXAMINATION

BY MR. PENA:

Q Just a few questions. Mr. Aguilar, the fact that the car was bearing Kentucky, or out-of-state license, would that give you any reason to suspect the car more than a Texas licensed car?

A No, sir, because I didn't notice that the vehicle was out of state until we went to the back, to the rear, to open up the trunk.

Q Was that a factor or consideration in asking that the trunk be opened?

A Sir, I had already smelled the marijuana.

Q Did you have any reason or basis to suspect or know that this vehicle had crossed the international boundary?

A No, sir.

Q Now, South of this, what you call a checkpoint, there is a large Metropolitan area which we call the Rio Grande Valley, is that correct?

A Yes, sir.

Q And there are a great number, thousands of U.S. citizens living in this area?

A Yes, sir.

Q Does this road on which you located the traffic checkpoint, does it directly lead to the river?

A Yes, it does, sir.

Q This particular road?

A This particular road connects with another farm-to-market road.

Q It connects with US 83, does it not?

A Forty-two land miles from there, yes, sir.

Q And US 83 travels up and down the valley parallel with the river?

A Yes, sir.

Q So it intercepts with US 83?

A Yes, sir.

Q But this particular road does not come directly from the river, this road?

A No, sir, it doesn't.

MR. PENA: That is all, your Honor.

MR. SMITH: No further questions of this witness.

THE COURT: Thank you, sir, you may step down.

(Witness excused)

MR. SMITH: The Government has asked the court to take Judicial notice of the findings of the court in United States versus Enrique Alvarez Gonzalez, Criminal Number 74-B-277, and the findings of the court in that case, and with that, the Government would rest.

MR. PENA: The defense has nothing to offer. We do urge the motion to Suppress.

THE COURT: All right. Well, I am going to deny the motion to Suppress, and on the basis of the evidence presented, and the stipulation of the parties, find the defendant guilty.

I am going to ask that a pre-sentence investigative report be prepared.

PROBATION OFFICER: Yes, Your Honor.

THE COURT: When could you have that done?

PROBATION OFFICER: If the defendant is from out of State, it would take a little longer. A month is what Judge Garza usually gives us.

THE COURT: Then we will set the sentencing --

MR. PENA: We ask the court if the court could set the matter for sentencing in Houston. If Your Honor sits in Houston, that would be more convenient for the defendant.

THE COURT: Very well. The 26th of July in Houston at 9:30.

MR. PENA: That's fine, Your Honor.

THE COURT: He is on bond at the present time and the bond will be continued.

Is there anything further?

MR. SMITH: No, Your Honor.

THE COURT: Very well. Court is adjourned.

(Adjournment at 2:25 P.M.)

PROCEEDINGS

July 26, 1977

Sitting at Houston, Texas

(Defendant present in open Court in Person and by Counsel)

THE COURT: Call Criminal B-77-157, United States of America versus Harrel Lloyd Robinson, Jr.

You are Harrel Lloys Robinson, Jr.?

THE DEFENDANT: Yes, sir.

THE COURT: You are here with your counsel, Mr. Pena?

THE DEFENDANT: Yes.

THE COURT: Are you ready for the court to impose sentence at this time;?

THE DEFENDANT: Yes.

THE COURT: Is there anything you care to say to the court before sentence is imposed?

THE DEFENDANT: Yes, if I may. I don't consider myself a criminal. I would really like another chance. I have two children and a business, and I realize that I have done wrong, and I would like a chance to prove myself to the court and to my family.

THE COURT: Mr. Pena, do you have antying you care to say?

MR. PENA: Yes. As your honor may have seen from the report, Mr. Robinson served two tours in Viet Nam. He has

had two other brushes with the law, very minor, for which he received probation in one case and a fine in another case. This was about three years ago. We ask the court's consideration in passing sentence.

THE COURT: Does the government have anything they want to say?

MR. CAMIN: No, your Honor.

THE COURT: It is the judgment and sentence of the court that you be remanded to the custody of the Attorney General of the United States or his designated representative for a term of five years with a special parole term of two years.

MR. PENA: My client said he would like to -- we ask the court for ten days to file written notice of appeal.

THE COURT: That will be granted, and bond will be continued. This is all for now, you may be excused.

REPORTER'S CERTIFICATE

I, CLINTON B. GETTIG, Official Court reporter for the United States District Court for the Southern District of Texas, appointed pursuant to the provisions of title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth, and I do further certify that the foregoing transcript has been prepared by me or under my direction.

s/ Clinton B. Gettig
CLINTON B. GETTIG
Official Court Reporter
10014 U.S. Courthouse
515 Rusk Street
Houston, Texas 77002

STIPULATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA

VS. CRIMINAL NO. B.-77-157

HARREL LLOYD ROBINSON, JR.
GARY LOUIS HARTLAGE

FILED: June 20, 1977

STIPULATION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW James R. Gough, United States Attorney for the Southern District of Texas, by and through Assistant United States Attorney John Patrick Smith and HARREL LOYD ROBINSON, JR., and GARY LOUIS HARTLAGE, with their counsel L. Aron Pena, and agree and stipulate to the following evidence in a court trial before the Honorablee Ross N. Sterling:

1. On March 19, 1977, at approximately 8:45 p.m. defendants Harrel Lloyd Robinson, Jr., and Gary Louis Hartlage approached the stop at the Border Patrol checkpoint located 7.8 miles northwest of La Gloria on FM 1017 in Starr County, Texas. Robinson was the driver and Hartlage the passenger in a black/yellow

1973 Ford, 4-door, displaying 1977 Kentucky license ECL 525. As the vehicle and subjects stopped, Aguilar approached the vehicle for an immigration check of the occupants. Aguilar noticed that the vehicle was riding very high in the rear and that the vehicle contained suitcases and clothing in the back seat. Aguilar further noticed what he suspected as being a strong odor of marihuana. At that time Aguilar requested Robinson to open the trunk. Robinson did as requested but attempted to reclose the trunk before the agent could look inside. Aguilar then requested Robinson to open the trunk again which Robinson did and Exhibit 1, approximately 235 pounds of marihuana contained in three burlap sacks as well as loose brick forms wrapped in tan paper were lying in plain sight. At this time Aguilar placed both defendants under arrest and advised the defendants of their constitutional rights in the presence of Agent Babb. Both defendants were asked if there were any firearms in the vehicle and both stated that there was a pistol in the luggage on the rear seat of the car. The pistol, Exhibit A, was an Iver-Johnson .38 caliber blue steel revolver, serial no. G42888, was found in a blue suitcase. The pistol was found to be located with five rounds of .38 caliber ammunition. Exhibit B, six rounds of .357 magnum ammunition; Exhibit C, 13 rounds of .38 special ammunition were also found and in the same suitcase. At this time Special Agents Wayne Wilkins and Michael Harper of the McAllen Drug Enforcement Administration were notified and travelled to the La Gloria checkpoint.

2. Special Agent Wilkins, assisted by Special Agent Michael Harper then took custody of Exhibit 1, Exhibits A, B, and C, both defendants and their vehicle. The defendants and vehicle were transported back to McAllen where the vehicle was stored and the defendants placed in the Hidalgo County Jail in Edinburg, Texas, pending arraignment on March 21, 1977. Special Agent Wilkins retained custody of Exhibit 1, A, B and C for appropriate disposition at a later date.

3. Special Agent Wayne Wilkins took custody of approximately 235 pound seizure on March 19, 1977, and maintained custody until March 21, 1977, when he weighed and processed and photographed the seizure. Special Wilkins sampled and sent to Drug Enforcement Administration Laboratory in Dallas, Texas, via registered mail number 125. The samples were received by the Drug Enforcement Regional Laboratory March 28, 1977. George W. Lester received samples April 21, 1977 ran test. A copy of the lab report is made a report of this stipulation.

Respectfully submitted,

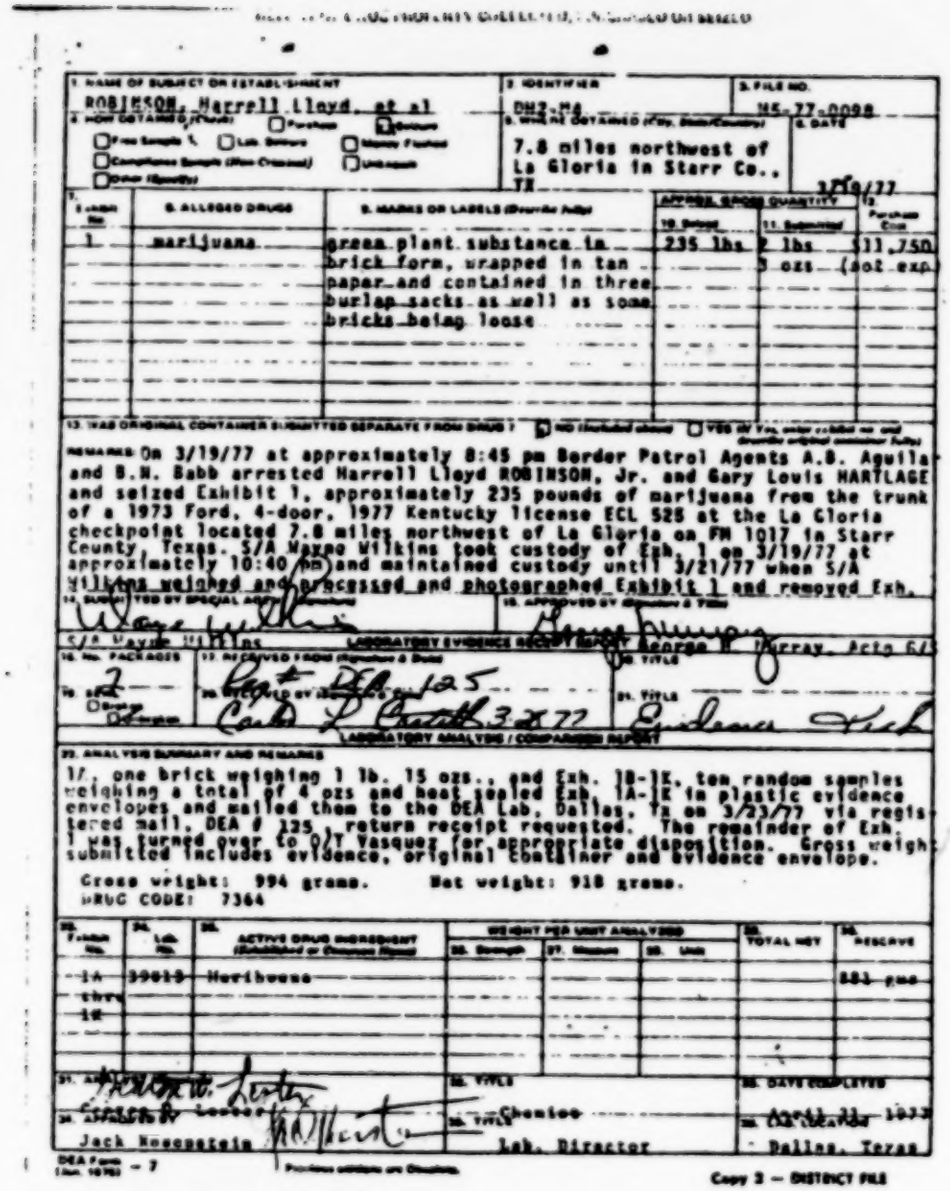
JAMES R. GOUGH
UNITED STATES ATTORNEY

BY: S/ John Patrick Smith
JOHN PATRICK SMITH
Assistant United States Attorney

S/ L. Aron Pena
L. Aron Pena, Attorney for Defendants

S/ Harrel Lloyd Robinson
HARREL LLOYD ROBINSON, JR. Defendant

GARY LOUIS HARTLAGE,
Defendant



1. NAME OF SUBJECT OR ESTABLISHMENT: ROBINSON, Harrell Lloyd, et al
2. IDENTIFIER: DH2-MG
3. FILE NO.: MS-77-0098
4. HOW OBTAINED: Seizure
5. WHERE OBTAINED: 7.8 miles northwest of La Gloria in Starr Co., TX
6. DATE: 3/19/77

7. ITEM NO.	8. ALLEGED DRUGS	9. MARKS OR LABELS	10. Seized	11. Submitted	12. Purchase Cost
1	marijuana	green plant substance in brick form, wrapped in tan paper and contained in three burlap sacks as well as some bricks being loose	235 lbs	2 lbs 3 ozs	$11,750 (not exp.

13. WAS ORIGINAL CONTAINER SUBMITTED SEPARATE FROM DRUG? ☐ NO ☒ YES

REMARKS: On 3/19/77 at approximately 8:45 pm Border Patrol Agents A.B. Aguila and B.N. Babb arrested Harrell Lloyd ROBINSON, Jr. and Gary Louis HARTLAGE and seized Exhibit 1, approximately 235 pounds of marijuana from the trunk of a 1973 Ford, 4-door, 1977 Kentucky license ECL 528 at the La Gloria checkpoint located 7.8 miles northwest of La Gloria on FM 1017 in Starr County, Texas. S/A Wayne Wilkins took custody of Exh. 1 on 3/19/77 at approximately 10:40 pm and maintained custody until 3/21/77 when S/A Wilkins weighed and processed and photographed Exhibit 1 and removed Exh.

14. SUBMITTED BY SPECIAL AGENT: Wayne Wilkins
15. APPROVED BY: Bruce Dinges

C/O Wayne Wilkins — LABORATORY EVIDENCE RECEIPT — Mary George, Acts for

16. No. PACKAGES: 2
17. RECEIVED FROM: Capt. DEA #125
18. TITLE:
19. DATE: Carla L Pratt 3-22-77
20. TITLE: Evidence Tech

LABORATORY ANALYSIS / COMPARISON REPORT

21. ANALYSIS SUMMARY AND REMARKS: 1/, one brick weighing 1 lb. 15 ozs., and Exh. 1B-1E, ten random samples weighing a total of 4 ozs and heat sealed Exh. 1A-1E in plastic evidence envelopes and mailed them to the DEA Lab, Dallas, Tx on 3/22/77 via registered mail, DEA # 125, return receipt requested. The remainder of Exh. 1 was turned over to D/T Vasquez for appropriate disposition. Gross weight submitted includes evidence, original container and evidence envelope.

Gross weight: 994 grams. Net weight: 918 grams.
DRUG CODE: 7364

22. Item No.	23. Lab No.	24. ACTIVE DRUG INGREDIENT (Established or Tentative Ident.)	WEIGHT PER UNIT ANALYZED: 25. Strength	26. Measure	27. Unit	28. TOTAL NET	29. RESERVE
1A	39019	Marihuana					881 gms
thru							
1E							

30. ANALYZED BY: Jack Rosenstein
31. TITLE: Chemist
32. DATE COMPLETED: April 21, 1977
33. LAB LOCATION: Dallas, Texas
34. TITLE: Lab. Director

DEA Form — 7 — Copy 2 — DISTRICT FILE

WAIVER OF JURY: CONSENT OF UNITED STATES
APPROVAL BY THE COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
Brownsville Division

UNITED STATES OF AMERICA
VS. CRIMINAL NUMBER B-77-157
HARREL LLOYD ROBINSON, JR.

FILED: June 20, 1977

WAIVER OF JURY: CONSENT OF UNITED STATES
APPROVAL BY THE COURT

Honorable ROSS N. STERLING, Judge Presiding

I, the undersigned defendant in this cause, after being in open court advised that I have the constitutional privilege to a trial by a jury, do hereby, in open court, voluntarily waive my right to a trial by jury in this cause and voluntarily consent that all proceedings had in this cause may be before the court without a jury.

s/ L. Aron Pena — Counsel for Defendant
Harrel L. Robinson — Defendant

UNITED STATES OF AMERICA, acting by and through James Gough, Acting United States Attorney, and John P. Smith, Assistant United States Attorney, does hereby consent in open court, that the defendant be tried without a jury.

James Gough
Acting United States Attorney

By: s/ John P. Smith
Assistant United States Attorney

This 20th day of June, came Defendant, HARREL L. ROBINSON, JR. in person, and the United States of America appearing by and through James Gough, Acting United States Attorney, and John P. Smith, Assistant United States Attorney, and the aforementioned Defendant having in open court voluntarily waived trial by jury in this cause and executed the waiver of trial by jury hereinabove set out in open court, and the United States of America in open court having consented to waiver of trial by jury by the aforementioned Defendant, and the consent to waiver of trial by jury herein-above set out having been duly executed in open court by an officer representing the United States in this cause, the court does hereby approve the waiver of jury trial by Defendant.

S/ Ross N. Sterling
United States District Judge

CLERK'S NOTICE OF APPEAL FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA
V. CRIMINAL
HARREL LLOYD ROBINSON, JR. NO. B-77-157

FILED: July 26, 1977

CLERK'S NOTICE OF APPEAL FOR DEFENDANT

The defendant Harrel Lloyd Robinson, Jr. in the above entitled and numbered cause,pursuant to Rule 32(a) (2) of the Federal Rules of Criminal Procedure in open Court having orally requested that the Clerk do so, Notice of Appeal on his behalf to the United States Court of Appeals for the Fifth Circuit, New Orleans, Louisiana, from the sentence imposed on the 26th day of July, 1977, is hereby given.

V. BAILEY THOMAS, CLERK
SOUTHERN DISTRICT OF
TEXAS

BY: S/ M. Goze
Deputy Clerk

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

UNITED STATES OF AMERICA
VS. CRIMINAL NO. B-77-157
HARREL LLOYD ROMINSON, JR.

FILED: August 4, 1977

NOTICE OF APPEAL

TO THE HONORABLE JUDGE OF SAID COURT:

Now Comes, HARREL LLOYD ROBINSON, JR., Defendant in the above styled and numbered cause, and gives this his Notice of Appeal from the judgment and sentence of the court, entered on the 26th day of July, 1977.

1. Your Defendant is Harrel Lloyd Robinson, Jr., and resides at 202 Crescent Court, Louisville, Kentucky.

2. The attorneys of record for your Defendant are L. Aron Pena of PENA, McDONALD, PRESTIA & ZIPP, 600 South Closner, Edinburg, Texas.

3. Harrel Lloyd Robinson, Jr. was charged and found guilty of the offense of possession of marihuana with the intent to distribute a narcotic drug, in violation of Sec. 841(a)(1), Title 21, United States Code.

4. The court sentenced your Defendant to five (5) years

in the custody of the Attorney General, with a special term of parole of two (2) years.

5. Your Defendant is now on bond pending this appeal.

Defendant, Harrel Lloyd Robinson, Jr., hereby gives Notice of Appeal to the United States Court of Appeals for the 5th Circuit from the above-stated judgment.

PENA, McDONALD, PRESTIA &
ZIPP
P.O. BOX 54
EDINBURG, TEXAS 78539

BY: S/ L. Aron Pena
L. ARON PENA
ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that I delivered a copy of
this document to U.S.D.A., at
Brownsville, Tx., postage prepaid,
on Aug. 4, 1977

Attorney for L. Aron Pena

Unit.. States of America vs. **United States District Court** for

DEFENDANT: SOUTHERN DISTRICT OF TEXAS

HARREL LLOYD ROBINSON, JR. — DOCKET NO. B-77-157

JUDGMENT AND PROBATION/COMMITMENT ORDER AO 245 (8-74)

COUNSEL: In the presence of the attorney for the government the defendant appeared in person on this date: MONTH July DAY 26, YEAR 1977

( ) WITHOUT COUNSEL

(X) WITH COUNSEL — J. Argo Pena

PLEA: ( ) GUILTY, and the court being satisfied that there is a factual basis for the plea. ( ) NOLO CONTENDERE. (X) NOT GUILTY

FINDING & JUDGMENT: There being a ~~XXXX~~ verdict of ( ) NOT GUILTY. Defendant is discharged (X) GUILTY.

Defendant has been convicted as charged of the offense(s) of possession with intent to distribute a quantity of marihuana, a controlled substance under Schedule I of the Controlled Substances Act of 1970, as charged in the Indictment.

SENTENCE OR PROBATION ORDER: FIVE (5) YEARS, with a Special Parole Term of Two (2) Years.

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
AUG 8 1977
V. BAILEY THOMAS, CLERK
BY DEPUTY

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION: In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, or modify the conditions of probation at any time during the probation period or within the maximum probation period permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION: The court orders commitment to the custody of the Attorney General and recommends:

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

APPROVED: JHP mg

SIGNED BY: (X) U.S. District Judge ( ) U.S. Magistrate

Date

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA

SOUTHERN DISTRICT OF TEXAS

I, V. BAILEY THOMAS, Clerk of the United States District Court for the Southern District of Texas, in the Fifth Circuit and District aforesaid, do hereby certify the foregoing to be the ORIGINAL PAPERS of the record and all proceedings had in Cause No. B-77-157 on the Criminal Docket of this Court at Brownsville entitled:

United States of America
vs.
Harrel Lloyd Robinson, Jr.

as the same now appears on file and of record in my office.

TO CERTIFY WHICH, witness my hand and the Seal of said Court at Brownsville in said District, this 14th. day of September, A.D. 1977.

V. BAILEY THOMAS, CLERK
UNITED STATES DISTRICT
COURT
SOUTHERN DISTRICT OF
TEXAS

BY: S/ B. Barbara
Deputy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

CR CASE NO. B-77-157

USA

VS

Harrel L Robinson Jr.

JUDGE Reynaldo G Garza / Ross N Sterling

Courtroom Deputy M Gonzalez

Court Reporter C Stribling

COURT TRIAL / JURY TRIAL / HEARING

DATE 6-20-77

EXHIBIT LIST OF Deft. Attorney L Arce Pena

PAGE 1 of ___ Pages

EX. NO.	DESCRIPTION	Marked	Offered	Objected	Admit	Date	Disposition after trial
1	Photo	✓	✓		✓	6/20	
2	Photo	✓	✓		✓	6/20	

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

THE UNITED STATES
VS. CRIMINAL CASE: B-77-157
Harrel Lloyd Robinson

CLERK'S CERTIFICATE

I, V. BAILEY THOMAS, Clerk of the United States District Court for the Southern District of Texas, do hereby certify that the following original exhibits were introduced in evidence upon the trial of the above entitled and numbered case:

GOVERNMENT'S
EXHIBITS NOS.
1

DEFENDANT'S
EXHIBITS NOS.
1 & 2

and that the same are herewith transmitted as a part of the Record on Appeal in the United States Court of Appeals for the Fifth Circuit.

TO CERTIFY WHICH, witness my hand and the Seal of said Court at Brownsville in said district, this 14th. day of September 1977.

V. BAILEY THOMAS, CLERK
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BY:S/ B. Barbara
Deputy

Supreme Court, U. S.
FILED
JUL 12 1978
MICHAEL RODAK, JR., CLERK

No. 77-1468

In the Supreme Court of the United States

OCTOBER TERM, 1978

HARREL LLOYD ROBINSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1468

HARREL LLOYD ROBINSON, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the Border Patrol checkpoint where he was stopped for a routine inquiry regarding citizenship was not a fixed checkpoint and accordingly that the evidence subsequently seized from his automobile should have been suppressed.

1. Following a jury-waived trial[1] in the United States District Court for the Southern District of Texas, petitioner was convicted of possession of marijuana with intent to distribute, in violation of 21 U.S.C. 841(a)(1) (Pet. App. A-48). He was sentenced to five years' imprisonment to be followed by a special parole term of two years (Pet. App. A-37).

---

[1]The only witness who testified at trial was a Border Patrol agent. A transcript of his testimony is set out at Pet. App. A-16 to A-34. The remainder of the facts were stipulated (see Pet. App. A-15); the stipulation is reprinted at Pet. App. A-39 to A-41.

The undisputed evidence shows that at approximately 8:45 p.m. on March 19, 1977, petitioner's car was stopped at the Border Patrol checkpoint at La Gloria, Texas (Pet. App. A-17 to A-18, A-39 to A-40). When a Border Patrol agent approached the vehicle to conduct an immigration check, the agent detected a strong odor of marijuana (Pet. App. A-17 to A-18, A-40). He then asked petitioner to open the trunk of the car (Pet. App. A-18, A-40). Petitioner opened the trunk only part of the way, but the agent, shining a flashlight, saw what appeared to be marijuana, asked petitioner to open the trunk completely, and found 235 pounds of marijuana (Pet. App. A-18, A-40).

2. As described by the Fifth Circuit in an earlier case, "[t]he La Gloria checkpoint lies at the confluence of a number of established roads leading away from a sparsely populated segment of the border. La Gloria's location [approximately 42 miles from the border] is such that it is the first point at which international traffic from areas of significant uncontrolled access receives scrutiny." *United States* v. *Alvarez-Gonzalez*, 561 F. 2d 620, 624 (C.A. 5) (footnote omitted). Although this checkpoint has no permanent buildings, it has permanent road signs, flood lights, a light pole, and a paved apron for secondary inspections (Pet. App. A-22, A-26 to A-28, A-31 to A-32). See *United States* v. *Alvarez-Gonzalez*, *supra*, 561 F. 2d at 622.

In *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 566, this Court held that "stops for brief questioning routinely conducted at permanent checkpoints are consistent with the Fourth Amendment and need not be authorized by warrant." Petitioner contends, however (Pet. 2), that the stop of his vehicle occurred at "a non-existent immigration checkpoint." This factual determination was resolved against him by both lower courts and does not

warrant further review. See *Berenyi* v. *District Director, Immigration and Naturalization Service*, 385 U.S. 630, 635-636. Moreover, as noted above, the findings of the courts below are amply supported by the record.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

JULY 1978.

---

[2]Petitioner does not contest the court of appeals' holding (Pet. App. A-3) that "[t]he odor of marijuana perceived by the officer during [petitioner's] stop furnished probable cause for further investigation." See *United States* v. *Woody*, 567 F. 2d 1353, 1357 (C.A. 5); *United States* v. *Arrasmith*, 557 F. 2d 1093, 1094 (C.A. 5); *United States* v. *Diaz*, 541 F. 2d 1165, 1166 (C.A. 5).

Alternatively, as the court of appeals held (Pet. App. A-3), since the La Gloria checkpoint is "the functional equivalent of the border" (see *United States* v. *Alvarez-Gonzalez*, *supra*, 561 F. 2d at 626), the search here was valid even in the absence of probable cause. See *Almeida-Sanchez* v. *United States*, 413 U.S. 266, 272-273.

DOJ-1978-07